1476.

SUPREME COURT OF THE UNITED STATES,

No. 106.

HOLLINGSWORTH MAGNIAC, DANIEL S. MAGNIAC, AND WILLIAM JARDINE, LATE TRADING UNDER THE FIRM OF MAGNIAC & CO., APPELLANTS,

vs.

JOHN R. THOMSON.

ON APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

INDEX.

	Original.	Print.
Bill of complaint	1	1
Exhibit A	14	13
Exhibit B and C	15	14
Demurrer	18	17
Opinion of the court	19	17
Decree	29	23
Appeal	29	24
Clerk's certificate	30	24
Record in the suit at law, referred to in the bill	31	24
Certificate of clerk	53	37

[GIDEON, Print.]

Pleas before the honorable the judges of the circuit court of the United States, for the eastern district of Pennsylvania, in the third circuit, of April session, 1851, No. 16.

It is thus contained:

HOLLINGSWORTH MAGNIAC, Daniel Snaith Magniac, and William Jardine, late trading under the firm of Magniac and company, subjects of the Queen of Great Britain,

vs.

JOHN R. THOMSON.

Bill in equity.

To the judges of the circuit court of the United States, for the eastern district of Pensylvania.

Hollingsworth Magniac, Daniel Snaith Magniac, and William Jardine, late trading under the firm of Magniac and company, subjects of the Queen of Great Britain, bring this their bill against John R. Thomson.

And thereupon your orators complain and say:

That your orators being creditors of the said defendant in a large sum of money, by your orators to the said defendant lent and advanced, brought their action, on the law side of this court, against the said defendant, to the October sessions, in the year one thousand eight hundred and twenty-six, number eighteen, in which action it was so proceeded, that on the fourteenth day of July, in the year one thousand eight hundred and twenty-eight, it was then agreed, by writing filed of record, that judgment should be entered, as of the 26th day of November, in the year 1827, against the said defendant, and in favor of your orators, for the sum of twenty-two thousand one hundred and ninety-one dollars and seventy-two cents; and a judgment was accordingly so entered, which stands to this day wholly unreversed and not in any manner appealed from, and which said judgment has not been to this time paid or satisfied in whole or in any part of the same, but remains due to your orators, with the large arrears of interest thereon accumulated, as by said record and proceedings on the law side of this court will ful y and at large appear, and to which your orators refer; and which they pray may be, as to the entire record thereof, and all proceedings in the said cause, taken as part of this their bill.

And your orators, who are foreigners and residents abroad, to wit, in England, have no means of recovery of their debt so due by the said defendant as aforesaid, save through the said judgment so confessed to

Pleas before the honorable the judges of the circuit court of the United States, for the eastern district of Pennsylvania, in the third circuit, of April session, 1851, No. 16.

It is thus contained:

HOLLINGSWORTH MAGNIAC, Daniel Snaith Magniac, and William Jardine, late trading under the firm of Magniac and company, subjects of the Queen of Great Britain,

vs.

JOHN R. THOMSON.

Bill in equity.

To the judges of the circuit court of the United States, for the eastern district of Pensylvania.

Hollingsworth Magniac, Daniel Snaith Magniac, and William Jardine, late trading under the firm of Magniac and company, subjects of the Queen of Great Britain, bring this their bill against John R. Thomson.

And thereupon your orators complain and say:

That your orators being creditors of the said defendant in a large sum of money, by your orators to the said defendant lent and advanced, brought their action, on the law side of this court, against the said defendant, to the October sessions, in the year one thousand eight hundred and twenty-six, number eighteen, in which action it was so proceeded, that on the fourteenth day of July, in the year one thousand eight hundred and twenty-eight, it was then agreed, by writing filed of record, that judgment should be entered, as of the 26th day of November, in the year 1827, against the said defendant, and in favor of your orators, for the sum of twenty-two thousand one hundred and ninety-one dollars and seventy-two cents; and a judgment was accordingly so entered, which stands to this day wholly unreversed and not in any manner appealed from, and which said judgment has not been to this time paid or satisfied in whole or in any part of the same, but remains due to your orators, with the large arrears of interest thereon accumulated, as by said record and proceedings on the law side of this court will fully and at large appear, and to which your orators refer; and which they pray may be, as to the entire record thereof, and all proceedings in the said cause, taken as part of this their bill.

And your orators, who are foreigners and residents abroad, to wit, in England, have no means of recovery of their debt so due by the said defendant as aforesaid, save through the said judgment so confessed to

them by the said defendant, having no security or pledge for the same, or any resort whatsoever, excepting only to the said judgment, which, if the said defendant can, by the pretences hereinafter described, which have been set up by the said defendant against your orators' right to use the said judgment against him, be successfully practised upon your orators by the said defendant, your orators will lose, and they will be deprived of, the entire amount so due them by the said defendant.

And the said defendant being, after the obtaining of the said judgment by your orators, supposed by your orators to be possessed of concealed means to satisfy the said judgment, and especially being supposed to have, unlawfully, when in a state of insolvency, and in order to defeat creditors, settled upon his wife a large amount of property, and having actually made, as afterwards appeared, transfers of property to his said wife between the date of your orators obtaining their aforesaid judgment against him and the date of their issuing the capias ad satisfaciendum against him, hereinafter mentioned, your orators issued, under their said judgment, process of execution against the person of the said defendant, to wit, a capias ad satisfaciendum to the April sessions, 1830, number —— of this court, and took into custody thereunder the body of the said defendant; by means of which process and arrest the said defendant must have either always remained and continued in actual close confinement, or have obtained his discharge therefrom by virtue of a petition and proceedings under the acts passed by the Commonwealth of Pennsylvania for the relief of insolvent debtors; the said defendants' petition and proceedings under which acts, if successful, would have exacted the assignment, by the said defendant, to his creditors of all estate and property whatsoever of the said defendant, whether held in his own name or concealed under the name or names of others, or unlawfully settled upon his wife, and have conferred upon him, in return, an immunity against liability to further bodily restraint or confinement for the non payment of such debts of him, the said defendant, as were at the date of such proceedings in insolvency due and owing by the said defendant, and which petition of the said defendant for the benefit of the said acts of insolvency, could have been filed by the said defendant, who was and is a citizen of New Jersey, only after lying three months in custody and confinement under the said writ of capias ad satisfaciendum. Whereupon, the said defendant being so arrested and taken, at the suit of your orators, under their said writ, it was then and there agreed, in writing, between your orators and the said defendant, that your orators should, without prejudice to their rights and remedies against the said defendant, permit the said defendant forthwith to be enlarged from custody, under the said process of execution; and that the said defendant should forthwith go to the then next session of the said circuit court of the United States for the eastern district of Pennsylvania, on the law side thereof, enter with your orators into an issue to be framed to try the question of the said defendant's being possessed, or not being possessed, of the means, either in or out of the said marriage settlement, to satisfy the said

judgment of your orators; the said issue to be tried without regard to form, or to the time when the jury for the trial thereof might be summoned; and the said defendant giving security to abide the event of the trial of the said issue; and, thereupon, the said defendant was enlarged from custody under the said process of execution. And the said agreement between your orators and the said defendant, a copy of which is hereto annexed, marked A, and prayed by your orators to be taken as part of this their bill, executed by the said defendant and by your orators, and by one Robert F. Stockton, as the surety of the said defendant, in the manner aforementioned, was filed of record in the said cause; and the extent of the liability of the said Stockton, as such surety under the said agreement, was afterwards explained by a paper dated the 3d of June, 1830, and which also was filed of record in the said cause; a copy of which said agreement is also hereto annexed, and marked B, and prayed by your orators to be taken as part of this their bill.

And your orators further show, that the marshal for the eastern district of Pennsylvania, to whom had been directed the said writ of capias ad satisfaciendum, to the said writ so against the said defendant issued, did make return that he had taken into custody, thereunder, the body of the said defendant; and he did further return that the said defendant had been discharged from custody with the consent of your orators. And your orators are advised, and so aver, that by the force and effect of the said writing, so entered into by your orators and the said defendant, and of the said proceedings under the same, herein before and herein after mentioned, the said defendant obtained no further or other advantage than that of a present discharge from close custody, and the judgment of a court of competent jurisdiction, that he, the said defendant, was then possessed of no means, whether in or out of the said marriage settlement, of satisfying your orators' said judgment; the said agreement, and proceedings under it, being a substitute for proceedings in insolvency; by which substitute, the said defendant, if he did not acquire the same extent of immunity which an insolvent discharge would have bestowed, at least obtained whatever immunity he did acquire by means less painful than an insolvency. And your orators show that the said issue, the trial of which was so provided as aforesaid, to be had between your orators and the said defendant, was tried, and it resulted in a verdict in the said issue, by which, so far as concerned the purposes and objects of the said trial under the said issue so framed, it was found that the said defendant had not the means, either in or out of the said marriage settlement, of satisfying the said judgment of your orators. And your orators show that the opinion of the judge who tried the issue, having been given to the jury as matter of law, on the trial of the said issue, that the said marriage settlement then and at that time protected against your orators, creditors of the said defendant, for the benefit of the wife of the said defendant, all such property as was in the hands of the trustee under the said settlement. And your orators show that the jury which tried the said issue

found, as a fact, that beyond and beside such property so comprised as aforesaid, within the said settlement, the said defendant, then and at that time, was possessed of no property whatsoever, as by the said record and proceedings, on the law side of this court, will fully and at large appear.

And your orators, referring, however, to the court here to which the same properly belongs, the question of the extent and character of the finding and judgment of the court upon the said issue so framed, as aforesaid, submit the foregoing, as under the advice they have received, their own conclusions and inferences from the record of the said proceedings.

And your orators further show, that the said wife of the said defendant, since the making of the said marriage settlement, and since the said judgment in the said issue, has died, without issue, and that by the act of her death, without issue, all estate and property, so as aforesaid by the said marriage settlement settled on the said trustee, to the uses and trusts of the said settlement, or for any other purpose whatever, by the said deed of settlement provided for, to wit, a lot of ground, of between four and five acres, in the town of Princeton, in New Jersey, and a house thereon erected at a cost of about thirteen thousand dollars, and the furniture therein, which cost five thousand dollars and upwards, and a sum of forty thousand dollars, or less, in cash and securities, which estate and property was so as aforesaid found, on the said trial of the said issue, to be then, and at that time, protected from access thereto by creditors of the said defendant, have, by the terms of the said deed of settlement, become the estate and property of the said defendant himself, as survivor of his said wife, who died, leaving no issue. And the said trust having wholly ceased and ended, the same are liable for his debts as by the said deed of settlement, a copy whereof is hereto annexed, marked C, and which your orators pray may be taken as part of this their bill, fully appears. And your orators further show, that the said trustee, in the said deed of settlement named, or his successor in the said trust, did, upon the happening of the event aforesaid, namely, the death of the wife of the said defendant without issue, the said defendant her surviving, and upon the expiration of the said trust or settlement, according to the terms of the same deed, make over, pay, and deliver unto the said defendant all the said trust property, namely, the said lot of from four to five acres of land in Princeton in New Jersey, the said house thereon erected at a cost of thirteen thousand dollars and upwards, the said furniture therein contained worth five thousand dollars and upwards, and the said sum of forty thousand dollars or less in cash or securities; of which said lands and chattels, namely, the said lot and house and furniture and cash and securities, the said defendant is now actually free, and clear of any trust whatever seized and possessed as of his own estate and property to him, his heirs, executors and assigns. And your orators further show that they have, as hereinafter mentioned, applied to the said defendant, out of the said lands and chattels so as aforesaid

found by the judgment of the said court to be then and at that time protected against creditors by the said deed of settlement, but which are not by the judgment of the court protected by the said deed of settlement against creditors now that the said settlement has, by its limitation as aforesaid expired, and the said lands and chattels become the property of the said defendant, but according to the opinion and judgment of the said court, are, on the contrary, now liable to creditors, to come to a full and true account with your orators for the said lands and chattels, according to your orators' said rights and interests in and against the same; or that he, the said defendant, would otherwise, and in any other manner consistent with equity, come to an account with your orators, of and for the said amount of the said judgment so by the said defendant to them due as aforesaid. And your orators had well hoped, that the said defendant would have complied with such their reasonable requests, as in justice and equity he ought to have done; but the said defendant pretends, as hereinafter mentioned, that he is not liable to account for the same, and your orators charge the contrary thereof. And your orators further charge that the said defendant ought to make an inventory of the said chattels, and which inventory ought to be signed by the said defendant, and deposited with a master of this court, for the benefit of the parties interested therein.

And your orators further show, that although the determination of the said issue was made by the said defendant to turn upon the most rigorous exactions of the law in its strictest sense, the said marriage settlement of the said defendant, so as aforesaid held to be available to protect the property comprised by it from execution by creditors, being, in fact, a settlement made by an insolvent man, namely, the said defendant, whereby his property, which, but for the said settlement, would have been immediately appropriated, by law, to the payment of his debts, was, under the form of a deed in favor of his wife, set aside for the purposes of his own comfort and subsistence; and although the said defendant, in defending the said issue, insisted upon and obtained from the court the enforcement of the rule according to which the said settlement was sustainable at law, even though the said defendant, by the making of the said settlement, not only did deprive his creditors of the assets therein comprised, but did, fraudulently, design and intend so to do; and although the said defendant's defence on the trial of the said issue, and which so as aforesaid prevailed, was in all respects to the last degree inequitable and unconscionable; yet your orators have since the determination of the said issue in no wise disturbed, vexed, or harassed the said defendant of or concerning the said debt by him to them due under the said judgment, but, on the contrary, the decision upon the said issue having been that the said defendant possessed not the means, as understood in law, of satisfying the debt of your orators, and your orators having had the opportunity in the trial of the said issue, as in the insolvent court they would have had of testing the truth of the said defendant's said averment of his lack of all capacity to satisfy the said judgment or any part thereof, and the said trial having re-

sulted in the decision of the said issue so as aforesaid, unfavorably to your orators, they were content to abide thereby until the said defendant, if it should so turn out in the course of time, acquired the wherewithal to satisfy, either in whole or in part, the said judgment to your orators so due as aforesaid. And your orators having patiently awaited the return of the said defendant's solvency, and his ability to meet his obligations to your orators, and having been reliably informed, within the last year, that the said defendant was once more restored in his circumstances, and, in fact, a man of property and of considerable wealth, recently called upon the said defendant to pay the said judgment so to them as aforesaid due and unpaid, in the full expectation that the said defendant, in consideration of the extreme hardship of the case of your orators, in which the payment of a judgment arising out of a cash loan had been disappointed by a settlement of the debtor upon his wife, although insolvent when he made the settlement, would meet your orators' call upon him, not according to the letter only of the aforesaid agreement, but in the spirit of his own professions of obligation to your orators for the same, and of your orators' forbearance toward him in his adversity, when, to your orators' astonishment, they were answered, not that the said defendant was unable to pay, or that he would be even inconvenienced by the paying, to your orators of the amount of the said judgment, but that he, the said defendant, inasmuch as according to law a party discharged by the plaintiffs' consent after being taken on a capias ad satisfaciendum was released from the debt, even though he had pledged himself to his creditors not to plead such discharge, proposed to set up this said or supposed rule of law, and the said discharge, for his protection against his own agreements and pledges, and against any further proceedings by your orators under their said judgment; and that he, the said defendant, then actually regarded and should to the court insist that the said judgment of your orators, his agreement to the contrary notwithstanding, was cancelled and himself no debtor of your orators at all. And your orators aver that the said defendant set up or pretended to no other defence than as aforesaid against your orators.

And your orators are advised, and so charge, that such a defence against their further proceedings under their said judgment, is contrary to conscience, fraudulent, and scandalous, and such as equity would not countenance, or permit to prevail, under any circumstances; and more especially that equity would forbid the setting up of such a defence in a case like that of your orators, wherein the conduct of your orators towards the said defendant has been uniformly mild, forbearing, and considerate, and wherein there is not to be found, or to be pointed to by the said defendant, in all the proceedings in the said cause, and in all the dealings and negotiation between your orators and the said defendant, of and concerning the same, from the date of the entry of the said judgment in favor of your orators, on the fourteenth day of July, one thousand eight hundred and twenty-eight, to the present time, one single circumstance which, judged by their debtor, the de-

fendant himself could in the least degree palliate or excuse an attempt on the part of the said defendant to escape from his written promise and pledge, so as aforesaid solemnly given to your orators, in all seeming good faith, that he, the said defendant, would not set up such a defence, but, on the contrary thereof, that he waived and wholly abandoned, as he well might do, all right and advantage whatsoever, to which in law he might otherwise be entitled by reason of his discharge as aforesaid from custody under the said *capias ad satisfaciendum* so as aforesaid executed at the suit of your orators. And your orators, although they now find the said defendant setting up, in contempt of his said promise and undertaking, such defence as aforesaid, to the prejudice of their said judgment, a defence which, until it was formally made known to them by the said defendant, they did not even remotely apprehend, are yet unwilling to believe that the said defendant entered into that obligation with the premeditated design of breaking the same, and are compelled to suppose the said defendant incapable of so great a fraud, and to believe that, when he put his name to the said agreement, that the said discharge of his person from custody, as aforesaid, should be without prejudice to the said plaintiffs therein, he signed the same in good faith, and meaning to abide by the terms thereof, and with no thought of violating them; perhaps not looking to what has since fortunately happened, the restoration of his affairs and his entire ability to meet his creditors' demands, and that the defence now actually set up by the said defendant against your orators' said judgment against him, is one to which, seeing himself unexpectedly called upon to pay an old debt by foreign and distant and almost forgotten creditors, he has been, in the disappointment of the moment, tempted to interpose. Touching, however, the motives of the said defendant, and the greater or lesser immorality thereof, of which they can know nothing but by conjecture, your orators refer themselves to the evidence to be produced in the progress of the cause, and to the opinion and judgment thereupon of this court; your orators, the rules of equity and their effect upon the rights of the parties being, as they are advised, exactly the same, whether the said agreement was signed by the said defendant with the prepared and premeditated purpose to violate it, or only upon afterthought, being content in the mean time, and until such motives shall develope themselves, to impute to the said defendant what would seem to be, of the two, the less fraudulent design.

And your orators further show, that the said defendant has not only threatened to your orators that he will make to prevail against the said judgment of your orators such defence, but it may be said he has already set up the same on the law side of this court, by his resistance of an application of your orators for a rule to show cause why a *scire facias* should not be issued to revive the said judgment of your orators, but which application for a rule has been since withdrawn by your orators.

And your orators further show, that they are prevented from proceeding at law against the said defendant under their said judgment, so as aforesaid recovered against him, and so unpaid and unsatisfied in whole

or in part, and so in no wise reversed or appealed from by the said defendant, by the said rule of law so as aforesaid set up against your orators by the said defendant. But your orators are advised that the use of the said rule of law, or any resort to the same, would be, on the part of the said defendant, contrary to equity, because, among other reasons, the said defendant having pledged himself that he would not resort to the said rule of law, by agreeing, as aforesaid, that the taking of the said defendant into and discharging him from custody should not prejudice the rights and remedies of your orators as plaintiffs in the said judgment, it would be in direct fraud of his said agreement, should the said defendant now resort to the said rule of law, to the prejudice of the said rights and remedies of your orators under the said judgment. And because the said agreement of your orators, that the said defendant should be discharged from custody, was obtained from your orators by the said defendant, by means which were inequitable and fraudulent, namely, by a stipulation on the part of the said defendant now offered to be violated by the said defendant, that the said discharge should be without prejudice to your orators; and which means were further inequitable and fraudulent, in this, that the consideration for the said discharge was illusory, fraudulent, and unreal, and was a stipulation, namely, the said stipulation that the said discharge should be without prejudice to your orators, which the said defendant could keep or break at his pleasure, and which supposed consideration for the said discharge of the said defendant, namely, the said stipulation that the said discharge should be without prejudice, was not a consideration sufficient to support the said agreement for the said discharge. And because the said mutual contract between your orators and the said defendant, that the said defendant should be discharged from custody, but withal that such discharge should not prejudice the rights or remedies of your orators against the said defendant, was either a contract entered into by the mutual error of the said defendant and your orators in this, that the said defendant and your orators mutually erred in supposing that the contract could be carried into effect, when, in fact, it could not be, of which said mutual error the said defendant now seeks to take advantage; or it was a contract entered into, your orators alone being in error, as aforesaid, in supposing that the contract could be carried into effect, when, in fact, it could not be; the said defendant, at the same time well knowing, and fraudulently availing himself of your orators' error, and entering into the said contract for the purpose, and with the fraudulent intent, of taking advantage of the said error, and meaning and intending that he, the said defendant should, by the said contract, obtain all the benefit and advantage of a discharge from the said *capias ad satisfaciendum*, and that your orators should not obtain the benefit of the corresponding stipulation provided for in the said contract, namely, that the said discharge should be without prejudice to the rights and remedies of your orators, as plaintiffs in the said judgment, of which said fraud of the said defendant the said defendant now seeks to take advantage. And your orators aver, that when they accepted the said

stipulation at the hands of the said defendant, namely, that the said discharge from custody of the said defendant should be without prejudice to your orators, they did actually and firmly believe that the said stipulation was capable of being enforced by your orators, at law, as well as in equity, according to the terms of the said agreement, and were wholly unaware that the said defendant could or would use, or resort to any rule of law whatever, whereby to escape the force and effect of the said stipulation so contained in the said agreement.

And because the said late wife of the said defendant, being now deceased, without issue, and by reason and consequence thereof the finding and decision aforesaid, in favor of the said defendant aforesaid upon the said issue so made up as aforesaid, under the said agreement between your orators and the said defendant, and also the said marriage settlement, upon the said wife of the said defendant, for the protection of the estate and property, comprised within the said settlement, having done their respective offices, and the law of the land itself now being an ample protection for the said defendant, from further process of arrest under the said judgment against the person of the said defendant, and thus by means of the premises the whole of the said agreement between your orators and the said defendant, so far as the same apply to the protection of the interests of the said defendant, being wholly and entirely superfluous, the said agreement being, in fact, therein a dead letter, the said defendant ought not, in violation of equity and good conscience, and to the total loss and destruction of your orators' debt, to have the benefit of that portion of the said agreement, namely, that which provided for the said discharge of the said defendant from custody, which, even at the time when it was made part of the said agreement, was without consideration and void, or was founded in mutual mistake or misapprehension on the part of your orators, and the said defendant, or of mistake and misapprehension on the part of your orators, and fraud on the part of the said defendant, and which agreement was otherwise, on the part of the said defendant, unconscionable and invalid.

And because, so far as regards the estate and effects comprised in the said settlement so made by the said defendant upon his said late wife, which estate and effects have, by the happening of the death of the defendant's said wife, without issue, become the property of the said defendant himself, it was found, by the said issue, that the said estate and effects were protected from liability to your orators, only by the said settlement, then in full force and vigor, and it was not found by the said issue that the said estate and effects would not be liable to your orators' said judgment upon the happening of the said event, which has since happened, namely, the death of the defendant's said wife, without issue, the said defendant surviving her; but, on the contrary, it was, in fact, found that the happening of that event would leave the said estate and effects liable to your orators' said judgment. And because it would be inequitable, and even absurd, that the said agreement between your orators and the said defendant, of which the

copy is hereto annexed, marked A, should be construed, against its evident meaning and intention, into a surrender, on the part of your orators, of their right to what, had they driven the said defendant to an insolvency, the said defendant must have assigned to your orators, by deed of assignment, namely, his, the said defendant's, right of reversion and survivorship in the said estate and effects, so settled upon his wife; and further, because it is inadmissible that the said issue, so formed under the said agreement, and in the framing and on the trial of which it was assumed by the court, and admitted by the said defendant, that the said estate and effects were liable to your orators' said judgment, but for the protection afforded by the said settlement should be construed to have, for its effect and consequence, that which was not contemplated by the parties and was not sanctioned by the court, and which, in itself, is wholly contrary to justice, namely, the discharging from liability to your orators of the said defendant's reversion and survivorship in the said estate and effects. And further, because the said issue having protected the said estate and effects as settled by marriage settlement, has done its office and can go no farther. And because, to permit the said defendant to avail himself of the said rule of law, so as aforesaid proposed to be enforced by him, would be to allow a party to make his case out of his own fraud, and take advantage of his own wrong.

All of which actings, doings, and refusals are contrary to equity and good conscience, and tend to the manifest wrong and injury of your orators. To the end, therefore, that the said defendant may, if he can, show why your orators should not have the relief hereinafter prayed, and may, upon his oath, and to the best and utmost of his knowledge, remembrance, information, and belief, full, true, direct, and perfect answers make to such of the several interrogatories hereinafter mentioned and set forth, as by the note hereunder written he is required to answer, that is to say:

1. Whether to the October sessions, 1826, No. 18, a suit at law was instituted in the circuit court of the United States for the eastern district of Pennsylvania, by the complainants against the defendant in this bill?

2. Whether in said section at law it was so proceeded that on the 14th day of July, 1828, it was agreed by writing, filed of record that judgment, as of the 26th day of November, 1827, should be entered against the said defendant, and in favor of the complainants, for the sum of twenty-two thousand one hundred and ninety-one dollars and seventy-two cents, ($22,191 72,) and whether judgment in the said action was accordingly so entered?

3. Whether the said judgment still remains wholly unreversed, and not in any manner appealed from?

4. Whether the amount of the said judgment has been, at any time, or in any part, paid by the said defendant to the said complainants, or whether the same still remains wholly unpaid, and whether the said plaintiffs therein, your orators, have any other means, known to the

said defendant, of compelling payment of the debt due, according to the said judgment, save by means of proceedings under the said judgment?

5. Whether in the said action at law, to the April sessions, 1829, Number 1, the said complainants caused to be issued a writ of capias ad satisfaciendum?

6. Whether said writ of capias ad satisfaciendum was returned by the marshal, non est inventus, and whether an alias capias ad satisfaciendum was issued, and the said defendant taken thereunder?

7. Whether a certain copy of an agreement annexed to your complainants' bill, marked A, is a true copy of the said agreement; and whether the said defendant was discharged from custody under the said alias capias ad satisfaciendum?

8. Whether in pursuance of the said agreement the said defendant gave security for his compliance with the terms thereof; and whether the copy annexed to your complainants' bill, being a portion of the paper marked A, is a true copy of the memorandum or paper by which said security was given?

9. Whether the extent of the liability of the said security was after explained by a paper dated the 3d of June, 1830, and filed of record in the said cause; and whether the copy hereto annexed, marked B, is a true copy thereof?

10. Whether the said issues so provided in the said agreement to be tried, were after tried, and resulted in the finding of the said issues in favor of the said defendant?

11. Whether the then wife of the said defendant has since, and at what date since, the trial and determination of the said issues, died without issue; and whether the said defendant upon that event received from the trustee under the said marriage settlement, and took possession, as of his own property, of the estate and effects settled upon his said wife so as aforesaid; and what, in full and minute detail the said estate and effects did consist of, as well the said lands as the said chattels. And what the rents, profits, interest, and dividends upon the said estate and effects have been since the said death of the said defendant's wife?

12. Whether the paper C, annexed to the bill, is a true copy of the said deed of marriage settlement?

13. Whether the said defendant is not now possessed of means, and what means, adequate and sufficient to meet the said debt so due as aforesaid to these complainants?

14. Whether the said complainants have lately called upon the said defendant for payment of the judgment so due them, as aforesaid?

15. Whether, in answer to the said call of the said complainants for payment of the said judgment, the said defendant has not replied that, according to law, a defendant discharged by the plaintiff's consent after being once taken on a capias ad satisfaciendum, was released from the debt, even though he had pledged himself to his creditor not to set up such discharge, and that he, the said defendant, was therefore not liable to

your orators on the judgment aforesaid; and whether he, the said defendant, has made any other answer whatever, and what other, to such call upon him of your orators?

16. Whether the said defendant does not set up and avail himself of, and whether he does not mean and intend to set up at law, and to avail himself of, the said alleged rule of law, to avoid and escape from his liability to your orators, under the said judgment, and in bar of any further proceedings at law thereunder?

In consideration whereof, and forasmuch as your orators can have no adequate relief without the assistance of a court of equity, to the end therefore that the said defendant and his confederates, when discovered, may severally, upon his and their oaths, according to the best and utmost of their respective knowledge, remembrance, information, and belief, full, true, perfect, and distinct answer make to all and every the interrogatories aforesaid, and that an account may be taken of the lands and chattels possessed by, and come to the hands of, the said defendant, with the profits, interest, and dividends thereon, from and out of the said trust and settlement since the expiration of the said trust. by the happening of the death of the said wife of the said defendant, without issue, he, the said defendant, her surviving, or to the hands of any other person or persons by his order or for his use. And that the said lands and chattels, and the said profits, interests, and dividends thereon, may be applied in payment of your orators' said judgment against the defendant. And that the said defendant may make out an inventory of the said chattels, and the said profits, interest, and dividents thereon, and of the rents and profits of the said lands so having come to the hands of the said defendant, since the expiration of the said trust; and that such inventory may be signed by the said defendant, and deposited with a master of this court. And that the said defendant may be forever restrained, by the order and injunction of this court, from aliening, or in any way disposing of, or parting with, the said lands and chattels, so far as the same may be liable to the said judgment so obtained by you orators. And that, also, he may be forever restrained, by the order and injunction of this court, from setting up at law the defence to the said action and judgment of your orators against the said defendant, that the said debt of the said defendant to your orators, so secured by the said action and judgment, has been released, or in any way impaired or affected, in whole or in part, by the said return to the said alias capias ad satisfaciendum so as aforesaid issued under the said judgment, or by the said arrangements and agreements, between your orators and the said defendant, touching the said capias ad satisfaciendum, and the said judgment and the issue above mentioned, concerning the said defendant's ability to pay and satisfy the same, or by any other matter or thing whatsoever connected with the aforesaid proceedings so had as aforesaid, under the said judgment; and that the said defendant may be forever restrained, by the order and injunction of this court, from setting up that the said defendant had been taken under the said alias capias ad satisfaciendum, and discharged by the consent of your orators, the plaintiffs therein, with-

1489.

out at the same time giving to his, the said defendant's, agreement so made with your orators, that the same should not prejudice your orators' rights and remedies against him, the said defendant, its full and proper force and equity; and that the said defendant may be restrained, by the order and injunction of this court, from any use whatever, against your orators, of the said return to the said alias capias ad satisfaciendum, and that the said return may be held and regarded to be, so far as concerns the use thereof by the said defendant, an inexistance, unless the said defendant, in using the same, shall use and plead the same in such wise as not to violate the obligations of his said agreement so made with your orators. And that the validity of the said judgment of your orators against the said defendant, on the law side of this court, may be declared by this court to be fully established; and that your orators may be enabled to collect from the said defendant his debt thereunder, and that the said defendant may be forever restrained, by the order and injunction of this court, from any proceedings to invalidate the same. And that your orators may have such further and other relief in the premises as to the court may seem meet, and the circumstances of the case may require, may it please the court to grant to your orators, your writ of subpœna, to be directed to the said John R. Thomson, thereby commanding him, at a day certain and under a pain therein to be limited, personally to be and appear before this court, and then and there, full, true, and perfect answer make to all and singular the premises, and further to stand to, perform, and abide such further order, direction, and decree therein as to the court shall seem meet, and your orators will ever pray.

The defendant is required to answer the interrogatories numbered respectively, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16.

E. INGERSOLL,
For Plaintiffs.

September 4th, 1851.

Exhibit A.

Circuit court of the United States, Pennsylvania district. No. 18, October, 1826.

MAGNIAC
vs.
THOMSON.

Defendant having been taken by ca. sa. in this suit, at his instance it is agreed that he be set at liberty on giving security to abide the event of an issue to be formed for ascertaining, by judicial decision, whether he has the means, by the property in his marriage settlement, or otherwise, of satisfying the judgment. Which issue is to be formed by plaintiffs' affirmance and defendant's denial of such means, both parties hereby consenting to try such issue at the ensuing session of the circuit court of the United States, for this district, on the merits, without regard to form or to the time when the jury may be summoned.

It being expressly acknowledged by the defendant that this agreement is made for his accommodation, without any prejudice whatever to arise to the plaintiffs' right by the defendant's enlargement on security as aforesaid or otherwise howsoever.

(Signed) JNO. R. THOMSON.

I hereby become answerable for the performance of the terms above stated, which I guaranty.

(Signed) R. F. STOCKTON.

Witness—J. P. NORRIS.

On the part of the plaintiffs in this case, I hereby consent to the defendant's enlargement on the terms stated in his written proposition and agreement of this date.

(Signed) C. J. INGERSOLL, *Atty.*

8th April, 1830.

Exhibit B.

MAGNIAC & Co.
vs.
JNO. R. THOMSON.

Whereas a feigned issue has been agreed upon by the parties in this case, for the purpose of ascertaining, by law, whether the defendant, John R. Thomson, has the means, by the property in his marriage settlement, or otherwise, of satisfying the judgment recovered against him in this court, to October sess , 1826, No. 18. Now, it is hereby agreed to be the understanding of the parties to the suit, if the plaintiff recovers, that the liability of the security for said defendant shall be to the extent of the property actually settled by said defendant on his intended wife, by virtue of a marriage settlement, dated the day of December, 1825. And if judgment shall be for the defendant, that the said property contained in said settlement shall be entirely discharged, and the security entered as above stated entirely at an end, either party to be at liberty to carry the case, according to established regulations, to the Supreme Court of the United States for determination. (Signed) C. J. INGERSOLL.

3 June, 1830.

J. P. NORRIS, Jr.
Att'y for Jno. R. Thomson.

Exhibit C.

Articles of agreement and covenant, made and executed this nineteenth day of December, in the year of our Lord, one thousand eight hundred and twenty-five, by and between John R. Thomson, esquire, late of the city of Philadelphia, of the first part, Annis Stockton, daughter of Richard Stockton, esquire, of the second part, and Richard Stockton, of the county of Somerset, and State of New Jersey, father and trustee of the said Annis Stockton, of the third part.

Whereas a marriage is intended to be shortly had and solemnized between the said John R. Thomson and the said Annis Stockton; and whereas, the said Richard Stockton has promised to give unto his said daughter a certain lot or tract of land belonging to him, situate in the county of Middlesex, and the State of New Jersey, directly opposite the mansion house of the said Richard Stockton, between the old road to Trenton and the turnpike road, which consists of between four and five acres of land, be the same more or less, and is bounded on the north and south by the said roads, on the west by lands of Dr. John Vanclave, and the east by a line to be run from the northeast corner of the garden now in the possession of Mrs. Abigail Field, to the said turnpike road; upon which said lot the said John R. Thomson has begun to build a house: Now it is hereby agreed between the parties aforesaid, and the said Richard Stockton, for himself and his heirs, doth hereby covenant and agree, to and with the parties of the first and second parts, their heirs, executors, and administrators, in consideration of the said marriage, and of the love and natural affection he hath for his said daughter, that, from the time of and immediately after the said marriage shall be solemnized, he, the said Richard Stockton, shall and will stand seized of the said lot and premises, and of all and singular the buildings and improvements which shall be erected and made thereon by the said party of the first part, to uses, trusts, and purposes hereinafter mentioned, and to none other, that is to say: In trust to permit the said John R. Thomson and Annis, his wife, during the time of their joint lives, to possess, live in, and occupy the said lot, house, and premises, with the appurtenances, free and clear of all demands; and in case the said parties of the first and second parts do not think proper to inhabit and reside in the said premises, that he, the said Richard Stockton, will let out, upon lease, the said premises, and receive the rents, issues, and profits thereof, and pay over the same to the said Annis, party of the second part, during the joint lives of the parties of the first and second parts. And if the said John R. Thomson should survive the said Annis Stockton, and have issue by her, then, in trust, to permit the said John R. Thomson, during his life, to inhabit and occupy the said premises, if he elect so to do, free and clear, as aforesaid, and pay over the said rents and profits, as he shall receive the same, to the said John R. Thomson, to the maintenance and support of him and his family, without he, the said John R. Thomson, being at any time thereafter accountable to any person or persons for the said rents and profits. And after the death of the said John R. Thomson, in trust for the child or children of the said marriage, in equal shares, as tenants in common in fee simple. And if there shall be no child or children of the said marriage, then, upon the death of either of the said parties of the first and second parts, in trust to convey the said premises to the survivor in fee simple. And the said John R. Thomson, for himself, his heirs, executors, and administrators, doth covenant and agree, to and with the parties of the second and third parts, that if the said marriage

shall take effect, and in consideration thereof, he will, with all convenient speed, build and furnish the said house in a suitable manner, as he shall judge fit and proper; and that the said erections, improvements, and furniture, together with the changes and additions which shall be from time to time made, shall be subject to and included in the said trusts, as far as the same are applicable to each species of property. And further, that he will, in the space of one year from the time the said marriage shall take effect, place out on good security, in stock or otherwise, the sum of forty thousand dollars, and hand over and assign the evidences thereof to the said party of the third part, who shall hold the same in trust to receive the interest, profits, or dividends thereon, as they shall, from time to time, arise, to the said party of the second part, during the joint lives of the parties of the first and second part; and that her receipts for the same, and also for what may be produced under the before mentioned trusts, shall be good and valid, notwithstanding her coverture. If the said party of the second part should die before the said party of the first part, and there should be issue of the said marriage, then in trust, to receive the said interest, profits, and dividends, and pay the same over, from time to time, to the said party of the first part, during his life, for the support of himself, and the maintenance and education of his children, without his being subject to any account as aforesaid; and, after his death, in trust for any child or children of the said marriage, in equal shares. And if the said Annis should survive the said John, and there be issue of the said marriage, then to pay over the same to the said Annis, during her life, for her maintenance and the support and education of the said children, and without her being liable to any account for the same; and, after her death, in trust for the child or children of the said marriage, in equal shares. And if there shall be no child or children of the said marriage, then, upon the death of the said John R. Thomson, or Annis, his wife, in trust to assign and deliver the said securities, and all moneys remaining due, to the one who shall survive, to his or her own uses. And it is further agreed and covenanted, by and between the parties aforesaid, that it may be lawful for the said John R. Thomson to act as the agent of the parties aforesaid, in all matters aforesaid, by the permission and under the control, if need be, of the said trustee, and to change, and, from time to time, alter the said securities, as occasion may require, and take new securities in their stead, so as that the fund, as aforesaid settled, shall always be kept good. And it is also hereby further agreed and covenanted, by and between all the said parties, that the said trustee shall not be held guilty of breach of trust, although he does not act personally in the premises, unless he be expressly desired and requested so to do by one of the other parties hereto, or those claiming under them; and that he shall not in any manner be held liable, as trustee, unless for acts of wilful neglect or misconduct.

MAGNIAC vs. THOMSON. } Demurrer.

In the circuit court of the United States for the eastern district of Pennsylvania.

Between Hollingsworth Magniac and others, complainants, and John R. Thomson, defendant, in equity.

Of April Sessions, 1851. No. 16.

The defendant, by protestation, not confessing all or any of the matters and things in the said complainants' bill contained, to be true in such manner and form as the same are therein set forth and alleged, doth demur to the said bill, and for cause of demurrer shows, that the matter of the said bill is not cognizable in this court, because, if the taking into custody of the body of the defendant, under the *capias ad satisfaciendum* in the bill mentioned was a legal discharge of the alleged debt in the bill mentioned, the complainants are not relievable in equity from the effect thereof, for or by reason of any act, matter, or anything alleged in the bill; and if the said taking into custody was not such a legal discharge, then the complainants have full, adequate, and complete relief at law; and for further cause of demurrer, the defendant shows that the said taking into custody under the said writ was and is to be deemed and taken to have been a discharge and extinction of the judgment of the plaintiffs at law, and a discharge and extinction, as well at law as in equity, of the debt for which the same was obtained. Wherefore, and for divers other good causes of demurrer appearing in the said bill, the defendant does demur thereto, and prays the judgment of this honorable court, whether he shall be compelled to make any further or other answer to the said bill; and he humbly prays to be dismissed from hence with his reasonable costs in this behalf sustained.

JOHN M. READ,
JOHN CADWALADER,
For defendant.

We certify that in our opinion the foregoing demurrer is well founded in point of law.

JOHN M. READ,
JOHN CADWALADER.

John R. Thomson, defendant, on his oath says, that the demurrer in this case is not interposed for delay.

Sworn and subscribed November, 1851, before

Opinion of the Court.

Afterwards, to wit, on the thirteenth day of September, A. D. 1852, the opinion of the court is delivered by Justice Grier, which opinion is in the words and of the tenor following, to wit:

The demurrer in this case places the bill in a dilemma from which it is difficult to escape. "If the *capias ad satisfaciendum* was a legal discharge of the alleged debt, the complainants are not relievable in equity from the effect thereof, for or by reason of any matter or thing alleged in the bill; and if the said taking into custody was not such a legal discharge, then the complainants have full, adequate, and complete relief at law."

The bill is undoubtedly drawn with much ingenuity, and in view of the difficulties in which the learned pleader saw it to be encompassed. He has, therefore, by allegations of fraud and mistake, endeavored to draw the case within those well known heads of chancery jurisdiction. But the facts and circumstances stated in the bill, show clearly that there was neither fraud or mistake in the case.

If a man, ignorant of the law that the release of one joint debtor is a release of the other, should give such a release, equity will not interfere to protect him against the legal consequences of his act. (See Hunt *vs.* Rousmanier, 1 Peters, 1.) And even if the mere allegation of a mistake of the law would give jurisdiction to courts of equity, and be a sufficient ground for relief, the documents connected with this transaction, being executed by most able and learned counsel, leave not the slightest room for any pretence of a mistake of the law. On the contrary, it will appear (as we shall show) that they were fully aware of the legal effect and consequences of the voluntary discharge of the defendant from imprisonment, and obtained all that they expected to obtain by his arrest.

Assuming, for the purposes of this case, that *if* the defendant had obtained his discharge from the arrest by fraud and deceit practised on the plaintiff, equity would interfere and annul the discharge so obtained, as to all its legal effects prejudicial to the defrauded party; yet the facts stated in the plaintiffs' bill do not allege such a case. Thomson made no false representations in order to obtain his discharge; he made no concealment of his property; he gave security to pay the value of the property settled on his wife, if it should be determined that the property was liable to the payment of such debts; he fulfilled his contract in good faith. These facts are all admitted by the bill and exhibits. But the imputation of fraud, which it is supposed will justify the interference of a court of equity, is the fact that the defendant and plaintiff differ in their construction of the intention and legal effect of that agreement. And the bill prays that the defendant may be enjoined from setting up *his* construction of it in a court of law, by way of defence to the plaintiffs' claim. Much as this bill has been seasoned with the phrases "fraudulently, deceitfully," &c.; this is, in fact, all the fraud imputed to the defendant. A court of equity, when examining a bill of complaint to find a grievance which will justify its interposition, looks to the substantive facts averred in it, not to the adjectives or adverbs which may be added to qualify them.

The case presented by the bill, stripped of all unnecessary epithets, is, in short, this: The complainants obtained a judgment against the defen-

dant some twenty-five years ago. The only property in possession of defendant, from which the judgment could in whole or in part be satisfied, was that contained in his marriage settlement, and conveyed for the trusts of that settlement. Whether this settlement was fraudulent or void as against creditors, and this property liable to be taken in execution, was a doubtful question. No bankrupt law was then in existence, by which the defendant could be compelled to assign for the use of his creditors, and thus have the question tried. The plaintiffs, therefore, arrest his body on a *ca. sa.;* the defendant proposes to give them security for the value of all the property contained in the marriage settlement, and all other of which he was possessed, if they will release him; and if, on trial of an issue for that purpose, the court shall decide that this settlement was void, as against creditors, then the whole amount to be applied to the satisfaction of plaintiffs' judgment. By this contract the plaintiffs obtained a greater advantage than they could have expected from any general insolvent assignment. For if they had continued to hold the defendant's body, he might have made an assignment with preferences, and afterwards obtained his discharge under the laws of the United States. But by this contract they obtained *all*, even if that *all* turned out to be nothing. The chance of setting aside the marriage settlement was considered a good one, and well worthy of pursuit; while the expectancy dependant on the chances of his surviving his wife, and failure of issue, was held of no account.

We can see nothing in this transaction tending to show, either that the plaintiffs were not fully aware of the legal effect of the arrest and voluntary discharge of the defendant, or that, after having obtained from defendant an assignment with security to deliver all his property to the sole use of the plaintiffs' execution, they ever calculated on the probability or possibility that Thomson might thereafter acquire property, and be subject to future executions; or intended that this judgment should, notwithstanding his arrest and assignment, remain as an incubus upon all his future struggles to amend his fortunes. Content with the surrender of all the property within the power and control of the defendant, they did not covenant for his future earnings or possible acquisitions, nor for the renewed imprisonment of his body at their discretion. It is not usual to exact such hard bargains. It was a case of actual mercantile bankruptcy, without a technical discharge under a bankrupt law; and we see no reason to believe that either party, at the time of the contract, had any intention that there should be any future recourse to the judgment. They took good security for the performance of the agreement which was the consideration of defendant's release, knowing that such a release would operate as a legal satisfaction of their judgment. The transaction was bona fide, without any suspicion of deceit, misrepresentation, or fraud, on the part of defendant. Why, then, should equity interfere, if the judgment stands satisfied at law?

When a plaintiff has a valid legal judgment, equity may interfere as ancillary to a court of law, to enable the plaintiff to reach means of

actual satisfaction, which were beyond the grasp of an execution. But where a judgment is satisfied at law, equity will not interfere, unless where this satisfaction has been obtained by fraud or deceit, or made under some mistake of fact. As the facts exhibited by this bill, when severed from the epithets and adjectives used in framing it, show a transaction of which these qualities cannot be predicated; the defendant seems to have supported the first proposition of the hypothesis stated in their demurrer, viz., "that if the arrest and discharge of defendant has operated as a legal satisfaction of the judgment, the plaintiffs have shown no sufficient ground for the interference of a court of equity." The second proposition, that if the arrest and discharge has no such operation in law, then plaintiffs have full and adequate relief at law, is one which needs no argument; and, as a necessary corollary, this bill would have to be dismissed.

But as the question as to the legal effect of this arrest and discharge will recur to us immediately, on the law side of the court, and as its decision cannot be avoided by leaving it to another tribunal; and, moreover, as it has been fully and ably argued by the learned counsel, it will be proper to notice it and state our conclusions.

The doctrines of law as laid down by C. J. Hobart, in Foster vs. Jackson, (Hobart, 60,) seem to have been sanctioned by the subsequent decisions in England and this country. Blumfield's case (5 Rep.) which preceded it, is noticed in that decision. The difference of opinion between the learned judges, Coke and Hobart, as expressed in these cases, seems to have caused the statute of 21 Jac. 1 c., 24, which gives an execution against a defendant's lands and goods, who has been arrested and died in prison. The question in Blumfield's case arose, where the plaintiff had several judgments against joint and several debtors for the same debt. It was decided that the arrest and discharge of the defendant in one judgment was not actual satisfaction of the debt so as to bar an execution on the other judgment. The distinction between actual satisfaction as regards other parties bound for the same debt, and the legal and quasi satisfaction as between the parties, by an arrest and discharge of the defendant, is admitted in the case of Foster vs. Jackson. To this extent Blumfield's case has always been held as good law; but the other dicta and speculations of the learned judge in that case, cannot be received to affect the authority of the subsequent cases.

Without attempting to notice all the very numerous cases which are to be found in the more modern books of reports, the following may be stated as containing principles which have been universally admitted to be correct law, both in England and this country. They all proceed on the admitted axiom, that as between the parties, plaintiff and defendant, in the judgments, the arrest of the body of the defendant is legal satisfaction of the judgment, unless the party has been discharged by the act of God, or the act of law, without the plaintiff's consent.

Thus, in Vigors vs. Aldrich, (4 Burr, 2483,) and Jacques vs. Witty, (1 T. R., 357,) it is decided, that if a defendant has been taken in ex-

ecution and discharged on an agreement, the judgment is satisfied, and the action must be on the agreement. Clark vs. Clement, (6 T. R., 525,) and Turner vs. Hague, (7 T. R., 470,) confirm the same doctrine. In Blackburn vs. Stupart, (2 East., 243,) where the defendant was discharged on his agreement that he should be liable to be taken in execution again, it was held that the defendant could not be twice held in execution on the same judgment.

The question in Sharp vs. Speckenagle, (3 S. and R.,) was whether a discharge of the principal under the bread act, operated such a satisfaction of the judgment as could be pleaded by the bail in an action on his recognisance; and it was decided that it did not, on two grounds:

1st. Because the surety in a collateral suit could only set up actual satisfaction; and

2dly. The act of assembly permitting the discharge of the principal provided that it should not acquit any other person bound for the debt.

This decision does not in the least deny the doctrine of Blackburn vs. Stupart, but rather admits and affirms it.

The case of Jackson vs. Knight, (4 Watts and Serg., 412,) is somewhat anomalous, and would seem to except a case where the defendant agreed, on being discharged from arrest on a ca. sa., that he would pay the costs, and the judgment should remain a lien on his land. But the court, in the brief opinion delivered in that case, do not examine or call in question the doctrines established by the cases just referred to; in fact, they decided only that where the parties to a judgment have agreed it should remain a lien, notwithstanding the arrest, a purchaser of the land from the defendant was justified in treating it as an encumbrance, and refusing to pay the purchase money till it was arranged. Besides, this decision was in 1840, after the common law had been changed on this subject by statute in 1836, which allows another execution where the "defendant is discharged at his own request." The necessity for such a provision in the statute is conclusive evidence of the state of the law antecedently.

If the plaintiffs in this case had exacted from the defendant, as the price of his discharge, not only an assignment of all his property, but also a covenant and agreement that the judgment should be considered as unsatisfied, and that his property and his body should be liable at any time thereafter to be seized in execution, we think it clear that this latter agreement would be treated at law as altogether void. The common law, while it gave the power to the creditor of seizing the body of his debtor in execution, discouraged the use of a power so liable to abuse. It treated such an arrest as the ultima ratio, the end of all executions on that judgment, and legal satisfaction of it; and while it left the imprisoned debtor capable of making any contract for future payment, as a consideration for his discharge by the creditor, it gave such creditor no further remedy than he could obtain by an action on such contract. An agreement made by the debtor, under duress of imprisonment, by which he should be again liable to imprisonment on the same judgment, was contrary to the policy of the law, and void.

He was not permitted, when once in duress, to bargain away his liberty.

It is very evident, also, that an executory agreement which may be made the consideration of the discharge, even though endorsed on the execution, or filed in the court, can neither be treated as a judgment or recognisance, or as matter of record of any description; and if it be not under seal, the action on it will be as liable to be defeated by a plea of the statute of limitations, as it would be on any other simple contract.

Now, the argument for the plaintiffs in this case assumes that the agreement was intended to give the plaintiffs a right to issue future executions on this judgment; and, as we have seen, if such were its literal tenor, it would be void. But we think it due to the plaintiffs to say, that a proper construction of this contract will vindicate them from the charge of exacting so hard a bargain from a debtor under duress of imprisonment, and more especially when the debt is one of suretyship only.

Among mercantile men, if a debtor, and more especially a surety, surrenders all his present property to his creditors, it is not usual to exact a lien on his future acquisitions.

This agreement, while it very properly demands as the price of defendant's discharge an assignment of all his property, and security for its delivery in case the issue as to the validity of the marriage settlement should be adjudged in favor of plaintiffs, does not contain, in direct terms, any covenant that the arrest and discharge should not operate as satisfaction of the judgment, or that future executions might be issued on it. It merely states in general terms, (what was, no doubt, a fact,) that the agreement to release the defendant was for his accommodation, and covenants that no "prejudice whatever should arise to the plaintiffs' right by the defendant's enlargement, or otherwise however."

Now, the very learned counsel for plaintiffs, who dictated this instrument, well knew that this arrest and voluntary discharge of the defendant operated as a legal discharge of the judgment; and he knew, also, that a court of law would not regard any agreement for future execution made by a prisoner as binding. He cannot, therefore, be presumed, by this very vague and indefinite language, to have intended what he was unwilling to express in plain terms, to wit, that the defendant having given good security for the delivery of all his property to plaintiff as the price of his discharge, should nevertheless be liable to imprisonment the next day, or at any time thereafter. Yet such is the construction which it is now contended should be given to this language, a construction which makes the plaintiff take, and the defendant give, every thing for nothing.

What, then, may be supposed to have been intended by these words, "prejudice to the plaintiffs' rights?" When lawyers covenant about judgments and executions, they do not usually seek out such ambiguous and general phrases to express their meaning. What were the plain-

tiffs' "rights" which were the subject matter of the contract? For to these must we look to ascertain the meaning of this clause. The right they contracted for, and for which they got security, was the application of all the property of defendant to their debt. Whether that all was much or little, cannot affect the case. They considered the marriage settlement as void; the chance of setting it aside valuable; and the chance from the possibility of Thomson's survivorship, without children of the marriage, as nothing. They accordingly agreed, that if the issue should be decided against them, the "property should be entirely discharged."

Knowing that the discharge of defendant operated as satisfaction of the judgment, they were anxious that the "rights" obtained by the contract as a consideration for it should not be affected. The language used plainly indicates some uncertainty in the mind of the scrivener, whether the discharge might not be possibly set up as actual satisfaction of the debt, and not merely as technical satisfaction of the judgment. To guard against any such attempt to affect or injure the "rights" which were the subject of the contract, and guaranteed to plaintiffs by it ex majori cautela, was this language inserted in it.

The words "or otherwise, however," mean anything or nothing, and only tend to show that there was some vague notion of a possible legal advantage which might be taken, and which the learned counsel could not foresee clearly, and thought might be excluded by these comprehensive terms.

The intelligent and honorable men who executed this agreement cannot be supposed incapable of expressing clearly their intention. Nor can we presume any intention to coerce the defendant into so hard a bargain, or conceal it under vague and ambiguous generalities, as a different construction of this agreement would import.

Finally, we are of opinion:

1st. That the judgment against the defendant was legally satisfied by his arrest in execution and voluntary discharge.

2dly. That this effect of his discharge was not affected nor intended so to be, by any thing contained in the agreement made on that occasion.

3dly. That the bill shows no reason for setting aside this contract on the ground of fraud or mistake.

4th. That it is no part of the functions of a court of equity to enjoin a defendant from setting up a legal and just defence in a court of law, under the allegation that it is a fraud for him to differ with the plaintiffs in their construction of his contract. The defendant has as good right to impute fraud to the plaintiffs for the construction they put upon it. The court imputes it to neither party, but dismisses the bill with costs.

Decree.

And now, this 13th day of September, A. D. 1852, this cause came on to be heard upon demurrer, and was argued by counsel; and there-

upon, upon consideration thereof, it was ordered, adjudged, and decreed, that the bill of the complainants be dismissed, with costs.

Appeal.

Whereupon, afterwards, to wit, on the same day, the said complainants, by their said solicitor, pray leave to appeal from the said decree of the said circuit court for the said district, to the Supreme Court of the United States; which said appeal is allowed.

UNITED STATES OF AMERICA,
Eastern district of Pennsylvania, ss:

I certify the foregoing to be a full, true, and faithful copy of the record and proceedings of the circuit court of the United States for the eastern district of Pennsylvania, in the third circuit, in a certain suit in equity therein lately depending, wherein Hollinsworth Magniac and others, were complainants, and John R. Thomson was respondent.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said court at Philadelphia, this twenty-
[SEAL.] fourth day of September, A. D. 1852, and in the seventy-seventh year of the independence of the said United States.

GEORGE PLITT, *Clerk C. C.*

In the circuit court of the United States for the eastern district of Pennsylvania, in the third circuit, of October session, 1826.—No. 18.

HOLLINSWORTH MAGNIAC, ——— Jardine, and Daniel Magniac, trading under the firm Magniac & Co., aliens, and subjects of the King of Great Britain,	}	CHAUNCEY, DUNLAP, INGERSOLL.
vs.	}	18.
JOHN R. THOMSON, a citizen of the State of New Jersey.	}	NORRIS.

Amic. action case —Entered per agreement filed 5th October, 1826.

1826—Oct. 5.—John W. Perit, security for costs.

1827—April 18.—Narr. filed.

1827—May 24.—Agreement to amend the title of the action, and to substitute Charles J. Ingersoll for John W. Perit, as security for costs; filed.

1827—Sept. 8.—Rule to plead in one month or judgment.

1827—Sept. 17.—Defendant pleads non ass't. and payment, with leave, &c. Plaintiffs' reply non solv't and issues, and rule for special jury.

1827—Nov. 26.—Judgment confessed to the plaintiffs per writing filed, for twenty thousand nine hundred and twenty-nine dollars and seven cents, with interest from 24th November, 1826.

1828—July 14.—It is agreed, per writing filed, that the names of

the plaintiffs are Hollingsworth Magniac, Daniel Snaith Magniac, and William Jardine, trading under the firm of Magniac & Co., and that the judgment confessed stands good for twenty-two thousand one hundred and ninety-one dollars and seventy-two cents.

Ca. sa. No. 1, *April*, 1829.—*Al. ca. sa. No.* 9, *April*, 1830.

1830—April 12.—Agreement to try under the judgment—filed.

UNITED STATES OF AMERICA,
Eastern district of Pennsylvania, sct.

I certify the foregoing to be a true, full, and correct copy of the docket entries in the above case.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said court, at Philadelphia, this twenty-fourth day of September, A. D. 1852, and in the seventy-seventh year of the independence of the said United States.

[SEAL.]

GEORGE PLITT, *Clerk C. C.*

Record in the suit at law, referred to in the bill.

Pleas before the honorable the judges of the circuit court of the United States, for the eastern district of Pennsylvania, in the third circuit, of October session, 1826, No. 18.

It is thus contained:

In the circuit court of the United States, for the eastern district of the State of Pennsylvania, to October sessions, MDCCCXXVI.

Eastern district of Pennsylvania, ss:

John R. Thomson, a citizen of the State of New Jersey, was attached to answer Hollingsworth Magniac, Daniel Snaith Magniac, and William Jardine, trading under the firm of Magniac and Company, aliens and subjects of the King of Great Britain and Ireland, of a plea of trespass on the case, &c.; and whereupon, the said plaintiffs, by Thomas Dunlap, their attorney, complain: For that whereas the said John R. Thomson, on the second day of December, in the year of our Lord one thousand eight hundred and twenty-five, at Canton, to wit, at the district aforesaid, in consideration that they, the said plaintiffs, would lend and advance to him, the said John R. Thomson, the sum of sixty-three thousand Spanish dollars, undertook, and then and there faithfully promised the said plaintiffs, that he, the said John, would cause to be shipped on board of the ship Addison, A. Hedelius, master, and on board of the ship Superior, Phillips, master, then at Canton, and would cause to be transported to the port of Philadelphia, in the district of Pennsylvania aforesaid, a quantity of teas, amounting in value to the sum of eighty-six thousand Spanish dollars, upon the following terms and conditions, that is to say, that he, the said John R. Thom-

son, would and should endorse the invoice or invoices and bill or bills of lading of the said teas, so by him to be made as aforesaid in blank, and would then and there deliver the said invoice or invoices and bill or bills of lading so endorsed to the said plaintiffs, who should forward the invoices and bills of lading so endorsed to Messieurs Perit and Cabot, agents of the said plaintiffs, at the said port of Philadelphia, and that the said Perit and Cabot should deliver the said invoices and bills of lading to the said John R. Thomson, at Philadelphia aforesaid, when he, the said John R. Thomson, should, within the space of ten days after the arrival of the said ships at the said port of Philadelphia, [*should*] pay or cause to be paid to the said Perit and Cabot, agents as aforesaid, the said sum of sixty-three thousand dollars, in sterling bills on London, at the rate of four shillings and eight pence sterling money for each and every dollar; so that the said sum of sixty-three thousand dollars should by him, the said John R. Thomson, be placed to the credit of them, the said plaintiffs, in London, free of all costs, charges, expenses, or exchange whatever, to them, the said plaintiffs, and at the rate aforesaid; and also upon the condition that in case the said John R. Thomson should not, within the said space of ten days after the arrival of the said ships, cause the said payment so to be made to the said plaintiffs as aforesaid, then that the said invoices of teas should, by the said Perit and Cabot, agents as aforesaid, be sold for the highest and best price that could be obtained for them, for account and at the risk of him, the said John R. Thomson; and out of the proceeds of the said sales, that they, the said Perit and Cabot, should pay to them, the said plaintiffs, in London, as aforesaid, the said sum of sixty-three thousand dollars, free of all charges and expenses, and in case the said proceeds should not prove sufficient to make the said payment as aforesaid, then that he, the said John R. Thomson, would pay to the said Perit and Cabot, agents as aforesaid, the amount of the deficit on the said sales, and would enable the said Perit and Cabot, agents as aforesaid, to place the said full sum of sixty-three thousand dollars to the credit of the said plaintiffs in London, in manner and form as aforesaid.

And the said plaintiffs in fact say, that in consideration of the aforesaid promises and undertakings, and at the special instance and request of him, the said John R. Thompson, they, the said plaintiffs, on the day and year aforesaid, at Canton, to wit, at the district aforesaid, did lend and advance to the said John R. Thompson the said sum of sixty-three thousand dollars upon the terms and conditions aforesaid; and that he, the said John R. Thompson, in consideration of the said loan, and of his said agreement and undertaking as aforesaid, on the same day and year aforesaid, at Canton aforesaid, did cause to be shipped in and upon the ship Addison, A. Hedelius, master, an invoice of teas, as follows, that is to say, one hundred and eleven chests Young Hyson tea, one hundred and fifty-nine chests Hyson Skin tea, five hundred and fifteen chests Hyson Skin tea, twenty-six half chests curious Young Hyson, fifty half chests curious Hyson Skin, six hundred and twenty-

five chests Hyson Skin tea, fifty-eight chests Young Hyson, twenty-two chests Young Hyson, three hundred thirteen-pound boxes of Young Hyson, two hundred and nineteen thirteen-pound boxes of Young Hyson, ninety-eight half chests of Young Hyson, and two hundred half chests of Young Hyson; together of the invoice value of forty-two thousand one hundred and thirty-eight dollars and thirty-four cents; and also he, the said John R. Thomson, in consideration of the said loan and of his said promises and undertakings, did, on the second day of December, in the same year last aforesaid, at Canton aforesaid, cause to be shipped in and upon the ship Superior, Phillips, master, another invoice of teas, as follows, that is to say, six hundred and sixty-one chests Hyson tea, one hundred and seven half chests Hyson tea, four hundred and ninety-one chests Hyson tea, one hundred half chests Souchong tea, four hundred and ten ten-catty boxes Young Hyson tea, and two hundred and three chests Hyson tea; together of the invoice value of forty-four thousand and forty-one dollars and thirteen cents. And the said John R. Thomson did endorse the said several invoices and bills of lading in blank, and did deliver the same so endorsed in blank to the said plaintiffs; and they, the said plaintiffs in fact further say, that the said ship Addison and the said ship Superior, with the *the* said respective invoices of tea on board, did afterwards arrive in safety at the said port of Philadelphia; and that the said invoices and bills of lading of the said shipments of tea, so endorsed in blank as aforesaid, were duly forwarded to and received by the said Perit and Cabot, agents as aforesaid, at Philadelphia, of all which he, the said John R. Thomson, had notice, to wit, at Philadelphia aforesaid; and he, the said John R. Thomson, was then and there required by the said Perit and Cabot, agents as aforesaid, to pay the said sum of money and receive the said invoices and bills of lading and the teas therein specified, under and agreeably to the contract, promises, and undertakings so by him in this behalf made as above set forth; and he, the said John R. Thomson, was then and there notified by the said Perit and Cabot, agents as aforesaid, that if he, the said John R. Thomson, did not accept the said teas and make payment of the said sum of money as aforesaid, that the said teas would be forthwith sold for the account, and at the risk of him, the said John R. Thomson. Yet the said John R. Thomson did not, within ten days after the arrival of the said ships Addison and Superior at the said port of Philadelphia, or at any subsequent time before the sale hereinafter mentioned, receive the said teas, or any part thereof, or make payment of the said sum of money, or any part thereof, according to his said promises and undertakings so by him made to and with the said plaintiffs as aforesaid, but wholly refused to accept the said teas, and to pay the said sum of money; and thereupon they, the said Perit and Cabot, agents as aforesaid, did, on the second day of May, and first day of June, in the year of our Lord one thousand eight hundred and twenty-six, at the port of Philadelphia aforesaid, expose to sale the said teas, and did sell and dispose of the same; and on the said sale of the said teas there was a

great loss and deficit between the said sum of sixty-three thousand dollars and the proceeds of the said sale, to wit, a deficit of sixty thousand dollars. Of all which premises he, the said John R. Thomson, afterwards, on the day and year last aforesaid, at Philadelphia aforesaid, had notice; and by reason of the premises the said John R. Thomson, according to his promises and undertakings aforesaid, became liable, and ought to pay to the said plaintiffs the said sum of sixty thousand dollars, to wit, at Philadelphia aforesaid. And whereas the said John R. Thomson, on the twenty-second day of November, in the year of our Lord one thousand eight hundred and twenty-five, at Canton, to wit, at the eastern district of Pennsylvania aforesaid, in consideration that they, the said plaintiffs, would lend and advance to him, the said John R. Thomson, the sum of thirty thousand Spanish dollars, undertook, and then and there faithfully promised them, the said plaintiffs, that he, the said John R. Thomson, would cause to be shipped on board the ship Addison, A. Hedelius, master, then at Canton aforesaid, and cause to be transported to Philadelphia, in the said eastern district of Pennsylvania, an invoice of teas, amounting in value to the sum of forty-two thousand dollars, upon the following terms and conditions, that is to say, that the said John R. Thomson would endorse, or cause to be endorsed, the invoice and bill of lading of the said shipment of teas so by him to be made as aforesaid in blank, and would then and there deliver the said invoice and bill of lading, so endorsed in blank, to the said plaintiffs, who should forward the said invoice and bill of lading, so endorsed as aforesaid, to Messieurs Perit and Cabot, agents of the said plaintiffs, at the said port of Philadelphia; and that the said Perit and Cabot, agents as aforesaid, should deliver the said invoice and bill of lading so endorsed to the said John R. Thomson, at Philadelphia aforesaid, when he, the said John R. Thomson, within ten days after the arrival of the said ship Addison at the port of Philadelphia, should pay or cause to be paid to the said Perit and Cabot, agents of the plaintiffs as aforesaid, the said sum of thirty thousand dollars, in sterling bills on London, at the rate of four shillings and eight pence sterling [sterling] money for each and every dollar, so that the said sum of thirty thousand dollars, should by him, the said John R. Thomson, be placed to the credit of the said plaintiffs, in London, free of all cost, charges, expenses, and exchange, whatever, to them, the said plaintiffs; and also upon condition, that in case the said John R. Thomson should not, within the said space of ten days aforesaid, cause the said payment to be made to the said plaintiffs as aforesaid, then that the said invoice of teas should, by the said Perit and Cabot, agents as aforesaid, be sold for the highest and best price that could be obtained for the same, for account and at the risk of him, the said John R. Thomson; and out of the proceeds of the said sale they, the said Perit and Cabot, agents as aforesaid, should [should] pay to the said plaintiffs in London, as aforesaid, the said sum of thirty thousand dollars, free [free] of all charges and expenses. And in case the said proceeds should not prove sufficient to make the said pay-

ment as aforesaid, then that he, the said John R. Thomson, would and should make good and pay to the said Perit and Cabot, agents as aforesaid, the amount of the deficit on the said sale, and would enable the said Perit and Cabot, agents as aforesaid, to place the said full sum of thirty thousand dollars to the credit of the said plaintiffs in London, as aforesaid, in manner and form as aforesaid. And the said plaintiffs in fact say, that in consideration of the aforesaid promises and undertakings, and at the special instance and request of him, the said John R. Thomson, they, the said plaintiffs, on the day and year last aforesaid, at Canton, to wit, at the district aforesaid, did lend and advance to the said John R. Thomson the said sum of thirty thousand dollars, upon the terms and conditions aforesaid. And that he, the said John R. Thomson, in consideration of the said loan and of his said agreement and undertakings as aforesaid, on the same day and year aforesaid, at Canton aforesaid, did cause to be shipped in and upon the ship Addison, Hedelius, master, an invoice of teas, as follows, that is to say, one hundred and eleven chests young hyson tea, one hundred and fifty-nine chests hyson skin tea, five hundred and fifteen chests hyson skin tea, twenty-six half chests curious young hyson, fifty half-chests curious hyson skin tea, six hundred and twenty-five chests hyson skin tea, fifty-eight chests young hyson, twenty-two chests of young hyson, three hundred thirteen-pound boxes of young hyson, two hundred and nineteen thirteen-pound boxes of young hyson, ninety-eight half-chests young hyson, and two hundred half-chests of young hyson; together of the invoice value of forty-two thousand one hundred and thirty-eight dollars and thirty-four cents. And the said John R. Thomson did endorse the invoice and bill of lading of the said shipment of teas in blank, and did deliver the same so endorsed in blank to the said plaintiffs. And they, the said plaintiffs; in fact further say, that the said ship Addison, with the said invoice of tea on board, did afterwards arrive in safety at the said port of Philadelphia, and that the said invoice and bill of lading, so endorsed and delivered as aforesaid, were duly forwarded to and received by the said Perit and Cabot, agents as aforesaid, at Philadelphia; of all which he, the said John R. Thomson, had notice, to wit, at Philadelphia aforesaid. And he, the said John, was then and there required by the said Perit and Cabot, agents as aforesaid, upon the said arrival of the ship Addison, to pay the said sum of money, and receive the said invoice and bill of lading, and the teas therein specified, under and agreeably to the contract, promises, and undertakings, so by him made with and to the plaintiffs in this behalf as aforesaid. And he, the said John R. Thomson, was then and there notified by the said Perit and Cabot, agents as aforesaid, that if he, the said John R. Thomson, did not accept the said teas, and make payment of the said sum of money, as aforesaid, that the said teas would be forthwith sold for the account and at the risk of him, the said John R. Thomson. Yet the said John R. Thomson did not within ten days after the arrival of the said ship Addison, nor would then or at any subsequent time before the sale hereinafter mentioned, receive the said teas,

or any part thereof, or make payment of the said sum of money, or any part thereof, according to his said promises and undertakings so by him made with and to the plaintiffs, as aforesaid, but wholly refused to accept the said teas, and pay the said sum of money, in manner and form as aforesaid.

And thereupon they, the said Perit and Cabot, agents of the plaintiffs as aforesaid, did, on the second day of May and first day of June, in the year of our Lord one thousand eight hundred and twenty-six, expose to sale, pursuant to the notice so as aforesaid given to the said John R. Thomson, the said teas; and did sell and dispose of the same for the highest and best price that could be obtained for the same. And on the sale of the said teas there was a great loss and deficit between the said sum of thirty thousand dollars, and the proceeds of the said sale, to wit, a deficit of thirty thousand dollars; of all which premises he, the said John R. Thomson, on the day and year last aforesaid, had notice, to wit, at Philadelphia aforesaid. And by reason of the premises, the said John R. Thomson, according to his promises and undertakings as aforesaid, became liable and ought to pay to the said plaintiffs the said deficit and sum of thirty thousand dollars, to wit, at Philadelphia aforesaid.

And whereas the said John R. Thomson, on the second day of December, in the year of our Lord one thousand eight hundred and twenty-five, at Canton, to wit, the eastern district of the State of Pennsylvania, in consideration that they, the said plaintiffs, would lend and advance to him, the said John R. Thomson, the sum of thirty-three thousand Spanish dollars, undertook, and then and there faithfully promised the said plaintiffs, that he, the said John R. Thomson, would cause to be shipped on board the ship Superior, Phillips, master, then at Canton aforesaid, and would cause to be transported to Philadelphia, in the district of Pennsylvania aforesaid, an invoice of teas, amounting in value to the sum of forty-four thousand dollars, upon the following terms and conditions, that is to say, that he, the said John R. Thomson, would endorse the said invoice and bill of lading, so by him to be made [by him] as aforesaid in blank, and would then and there deliver the said invoice and bill of lading, so endorsed in blank, to the said plaintiffs, who should forward the said invoice and bill of lading so endorsed to Messieurs Perit and Cabot, agents of the said plaintiffs, at the said port of Philadelphia; and that the said Perit and Cabot, agents as aforesaid, should deliver the said invoice and bill of lading so endorsed to the said John R. Thomson, at Philadelphia aforesaid, when he, the said John R. Thomson, should, within ten days after the arrival of the said ship Superior at the port of Philadelphia, [*should*] pay or cause to be paid to the said Perit and Cabot, agents of the plaintiffs as aforesaid, the said sum of thirty-three thousand dollars in sterling bills on London, at the rate of four shillings and eight pence, sterling money of Great Britain, for each and every dollar; so that the said sum of thirty-three thousand dollars should by him, the said John R. Thomson, be placed to the credit of the said plaintiffs in London, free of all costs, charges, expenses, and exchange whatever, to them, the said plaintiffs, and at the

rate aforesaid. And also upon condition that in case the said John R. Thomson should not, within the said space of ten days from and after the arrival of the said ship Superior as aforesaid, cause the said payment to be made to the said plaintiffs, in manner and form as aforesaid, then that the said invoice of tea should, by the said Perit and Cabot, agents of said plaintiffs as aforesaid, be sold for the highest and best price that could be obtained for the same, for account and at the risk of him, the said John R. Thomson; and out of the proceeds of the said sale that they, the said Perit and Cabot, agents as aforesaid, should pay to the said plaintiffs, in London, as aforesaid, the said sum of thirty-three thousand dollars, free of all charges and expenses. And in case the said proceeds should not prove sufficient to make the said payment as aforesaid, then that he, the said John R. Thomson, should and would pay to the said Perit and Cabot, agents as aforesaid, the amount of the said deficit on the said sale, and would enable the said Perit and Cabot, agents as aforesaid, to place the said full sum of thirty-three thousand dollars to the credit of the said plaintiffs, in London, in manner and form aforesaid. And the said plaintiffs in fact say, that in consideration of the said promises and undertakings, and at the special instance and request of him, the said John R. Thomson, on the day and year last aforesaid, at Canton, to wit, at the district aforesaid, they, the said plaintiffs, did lend and advance to the said John R. Thomson the said sum of thirty-three thousand Spanish dollars, upon the terms and conditions aforesaid; and that the said John R. Thomson, in consideration of the said loan and of his agreement and undertakings as aforesaid, did, on the said day and year last aforesaid, at Canton aforesaid, caused to be shipped in and upon the said ship Superior, Phillips, master, an invoice of teas, as follows, that is to say: Six hundred and sixty-one chests Hyson tea, one hundred and seven half chests Hyson tea, four hundred and ninety-one chests Hyson tea, one hundred half chests Souchong tea, four hundred and ten ten-catty boxes Young Hyson tea, and two hundred and three chests Hyson tea, together of the invoice value of forty-four thousand and forty-one dollars and thirteen cents. And the said John R. Thomson did then and there endorse the invoice and bill of lading of the said shipment, in blank, and delivered the same so endorsed in blank to the said plaintiffs.

And they, the said plaintiffs, in fact further say, that the said ship Superior, with the said invoice of tea on board, did afterwards arrive in safety at the said port of Philadelphia; and that the said invoice and bill of lading of the said shipment of tea, so endorsed in blank as aforesaid, was duly forwarded to, and received by the said Perit and Cabot, agents as aforesaid, at Philadelphia; of all which he, the said John R. Thomson, had notice, to wit, at the said port of Philadelphia. And he, the said John R. Thomson, was then and there required by the said Perit and Cabot, agents of the plaintiffs as aforesaid, to pay the said sum of money, and to receive the said invoice and bill of lading, and the teas therein specified, under and agreeably to the contract, promises, and undertakings, so by him in this behalf made as herein before set forth. And he, the said John R. Thomson, was then and

there notified by the said Perit and Cabot, agents as aforesaid, that if he, the said John R. Thomson, did not accept the said teas, and make payment of the said sum of money as aforesaid, that the said teas would be forthwith sold, for account and at the risk of him, the said John R. Thomson. Yet, the said John R. Thomson did not, within ten days after the arrival of the said ship Superior, at the port of Philadelphia, or at any subsequent period between the said arrival and the sale hereinafter mentioned, receive the said teas, or any part thereof, or make payment of the said sum of money, or any part thereof, according to his said promises and undertakings so by him made to and with the plaintiffs, as aforesaid, but wholly refused to receive the teas, and to pay the said sum of money. And thereupon, they, the said Perit and Cabot, agents as aforesaid, did, on the first day of June, in the year of our Lord one thousand eight hundred and twenty-six, expose to sale the said teas, and did sell and dispose of the same for the highest and best price that could be obtained for the same. And on the sale there was a great loss and deficit, to wit, a deficit of thirty thousand dollars; of all which premises the said John R. Thomson had notice, afterwards, to wit, on the day and year last aforesaid, at the district aforesaid. And by reason of the premises, he, the said John R. Thomson, according to his promises and undertakings, became liable, and ought to pay to the said plaintiffs the said sum of thirty thousand dollars, to wit, at Philadelphia aforesaid. And whereas, the said John R. Thomson, afterwards, to wit, on the first day of October, in the year of our Lord one thousand eight hundred and twenty-six, at Canton, to wit, at the district aforesaid, was indebted to the said plaintiffs in other eighty-six thousand dollars, lawful money of the United States of America, for money before that time laid out, expended, and paid for the said John R. Thomson, and at his special instance and request; and being so indebted, he, the said John R. Thomson, in consideration thereof, afterwards, on the day and year last aforesaid, at the district aforesaid, undertook and faithfully promised the said plaintiffs to pay them the said last mentioned sum of money when he, the said John R. Thomson, should be thereto afterwards requested.

And whereas, the said John R. Thomson, afterwards, to wit, on the day and year last aforesaid, at Canton, to wit, at the district aforesaid, was indebted to the said plaintiffs in other eighty-six thousand dollars, like lawful money as aforesaid, for money before that time by the said plaintiffs lent and advanced to the said John R. Thomson, and at his special instance and request; and being so indebted, he, the said John R. Thomson, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, at the district aforesaid, undertook and faithfully promised the said plaintiffs to pay them the said last mentioned sum of money, when he, the said John R. Thomson, should be thereto afterwards requested.

And whereas, the said John R. Thomson, afterwards, to wit, on the day and year last aforesaid, at the district aforesaid, was indebted to the

said plaintiffs in other eighty-six thousand dollars, like lawful money as aforesaid, for divers goods, wares, and merchandise, by the said plaintiffs before that time sold and delivered to the said John R. Thomson, and at his special instance and request; and being so indebted, he, the said John R. Thomson, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at the district aforesaid, undertook, and then and there faithfully promised the said plaintiffs, to pay them the said last mentioned sum of money, when he, the said John R. Thomson, should be thereto afterwards requested.

And whereas, afterwards, to wit, on the same day and year last aforesaid, at the district aforesaid, in consideration that the said plaintiffs, at the like special instance and requests of the said John R. Thomson, had before that time sold and delivered to the said John R. Thomson divers other goods, wares, and merchandise, he, the said John R. Thomson, undertook, and then and there faithfully promised the said plaintiffs to them so much money as they reasonably deserved to have for the same, when he, the said John R. Thomson, should be thereto afterwards requested. And the said plaintiffs aver, that they reasonably deserve to have of the said John R. Thomson, for the same other eighty-six thousand dollars, like lawfully money as aforesaid, to wit, at the district aforesaid; whereof the said John R. Thomson, afterwards, to wit, on the same day and year last aforesaid, there had notice. And whereas, the said John R. Thomson, afterwards, to wit, on the same day and year last aforesaid, at the district aforesaid, was indebted to the said plaintiffs in other eighty-six thousand dollars, lawful money as aforesaid, for so much money by the said John R. Thomson before that time had and received to and for the use of the said plaintiffs; and being so indebted, he, the said John R. Thomson, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at the district aforesaid, undertook and faithfully promised the said plaintiffs to pay them the said last mentioned sum of money, when he, the said John R. Thomson, should be thereto afterwards requested. And whereas the said John R. Thomson afterwards, to wit, on the day and year last aforesaid, at Canton, to wit, at the district aforesaid, accounted, together with the said plaintiffs, of and concerning divers other sums of money before that time due and owing from the said John R. Thomson to the said plaintiffs, and then being in arrear and unpaid; and upon that account, he, the said John R. Thomson, was then and there found in arrear to the said plaintiffs in another large sum of money, to wit, the sum of other eighty-six thousand dollars, like lawful money; and being so found in arrears, he, the said John R. Thomson, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at the district aforesaid, undertook and faithfully promised the said plaintiffs to pay them the said sum of money last mentioned when he, the said John R. Thomson, should be thereto afterwards requested. Yet the said John R. Thomson, not regarding his said several agreements, promises, and undertakings, so by him made in their behalf as aforesaid, has not as yet paid the said several sums of money, or any part thereof, to the said plain-

tiffs (although so to do, he, the said John R. Thomson, was requested by the said plaintiffs, afterwards, to wit, on the day and year last aforesaid, and often afterwards, to wit, at the district aforesaid,) but he to do this has hitherto wholly refused, and still refuses so to do, to the said plaintiffs their damages of one hundred and seventy thousand dollars; and therefore they bring their suit, &c.

Plea.

And the said defendant, by J. P. Norris, junior, esquire, his attorney, comes and defends the force and injury, when, &c., and says, that he did not assume or take upon himself the payment of the said sum of money, as the said plaintiffs have declared against him, and of this he puts himself upon the country: and the said plaintiffs do the like.

MAGNIAC & Co.
vs.
JOHN R. THOMSON. } No. 18.

October sessions, 1826.

It is agreed that judgment be entered for the plaintiffs in this case, for the sum of twenty thousand nine hundred and twenty-nine dollars and seven cents, with interest from the 24th November, 1826.

J. P. NORRIS, JR.,
Attorney for defendant.
C. J. INGERSOLL,
For plaintiff.

November 26th, 1827.

HOLLINSWORTH MAGNIAC, Jardine, and Daniel Magniac, trading under the firm of Magniac & Co.,
vs.
JOHN R. THOMSON. } No. 18.

Circuit court of the United States, Pennsylvania district, October session, 1826.

To obviate any misconception or irregularity, it is hereby agreed that the names of the plaintiffs in this case are Hollingsworth Magniac, Daniel Snaith Magniac, and William Jardine; and that the style of their firm in trade is Magniac & Co., and that the judgment confessed in their favor by the defendant, on the 26th of November, 1827, stands good for the sum of twenty-two thousand one hundred and ninety-one dollars and seventy-two cents, as of that day.

MAGNIAC & CO.,
By their attorney, C. J. INGERSOLL.

J. P. NORRIS, JR.,
14th July, 1828. Attorney for J. R. THOMSON.

1494.

MAGNIAC vs. THOMSON. } No. 18.

Circuit court of the United States, Pennsylvania district, October, 1826.

Defendant having been taken by ca. sa. in this suit, at his instance it is agreed that he be set at liberty on giving security to abide the event of an issue to be formed for ascertaining, by judicial decision, whether he has the means, by the property in his marriage settlement, or otherwise, of satisfying the judgment; which issue is to be formed by plaintiffs' affirmance, and defendant's denial, of such means; both parties hereby consenting to try such issue at the ensuing session of the circuit court of the United States for this district, on the merits, without regard to form, or to the time when the jury may be summoned: it being expressly acknowledged by defendant, that this agreement is made for his accommodation, without any prejudice whatever to arise to the plaintiffs' rights by the defendant's enlargement on security as aforesaid, or otherwise, howsoever.

April 8th, 1830. JNO. R. THOMSON.

I hereby become answerable for the performance of the terms above stated, which I guaranty.

Witness, J. P. NORRIS, jr. R. F. STOCKTON.

On the part of the plaintiffs in this case, I hereby consent to the defendant's enlargement on the terms stated in his within proposition and agreement of this date.

9th April, 1830. C. J. INGERSOLL, *Attorney*.

Afterwards, to wit, on the first day of April, A. D. 1829, the said plaintiffs, by their attorney aforesaid, prosecute and sue forth out of said court the writ of capias ad satisfaciendum of the President of the United States, to the marshal of the eastern district of Pennsylvania directed, and which said writ is in the words following, to wit:

UNITED STATES, *district of Pennsylvania, sct.*

The President of the United States, to the marshal of the eastern district of Pennsylvania, greeting:

We command you that you take John R. Thomson, a citizen of the State of New Jersey, late of your district, if he may be found therein, and him safely keep, so that you may have his body before the judges of the circuit court of the United States, in and for the district of Pennsylvania, in the third circuit, at a session of the same court, to be holden at Philadelphia, on the eleventh day of April next, to satisfy Hollingsworth Magniac, Daniel Snaith Magniac, and William Jardine, trading under the firm of Magniac & Co., as well of a certain sum of twenty-two thousand one hundred and

[Seal of circuit court, U. S.]

ninety-one dollars and seventy-two cents, which to the said Hollingsworth, Daniel, and William, in the said court, before the judges of the said court, by the consideration of the same judges, was adjudged for their damages which they had sustained by occasion of the non-performance of certain promises and assumptions by the said John R. Thomson to the said Hollingsworth, Daniel, and William made, as the sum of seventeen dollars and forty cents, which to them was in like manner adjudged for their costs and charges by them about their suit in that behalf expended, whereof the said John R. Thomson is convict; and have you then there this writ.

Witness the honorable John Marshall, chief justice of the Supreme Court of the United States, at Philadelphia, this thirteenth day of October, A. D. 1828, and in the fifty-third year of the independence of the said United States.

D. CALDWELL, *Clerk circuit court.*

Endorsed:

No. 1, circuit court, April sess., 1829. Original, No. 18, October sess., 1826. Hollingsworth Magniac, Daniel Snaith Magniac, and William Jardine, trading under the firm of Magniac & Co., aliens and subjects of the King of Great Britain, *vs.* John R. Thomson, a citizen of the State of New Jersey. Ca. sa. case. Real debt, $22,191 72; interest from 26 Nov., 1827; costs, att'y for plaintiffs, $8 50; clerk, $5 37; marshal, $3 33; crier, 0 20, $17 40. Ca. sa., $2 40. Mr. Ingersoll for pl'ffs.

Marshal's return.

Afterwards, to wit, on the eighth day of April, A. D. 1830, the said marshal makes return thereof in the words following, to wit:

Non est inventus. So answers

J. CONARD, *Marshal.*

Afterwards, to wit, on the said eighth day of April, A. D. 1830, the said plaintiffs, by their said attorney, prosecute and sue forth, out of said court, an alias capias ad satisfaciendum of the President of the United States, to the marshal of the eastern district of Pennsylvania aforesaid directed, and which is in the words following, to wit:

UNITED STATES, *district of Pennsylvania, sct.*

The President of the United States to the marshal of the eastern district of Pennsylvania, greeting:

We command you, as before we have commanded you, that you [Seal of circuit court, U. S.] take John R. Thomson, a citizen of the State of New Jersey, late of your district, if he may be found therein, and him safely keep so that you may have his body before the judges of the circuit court of the United States, in and for the district of Penn-

sylvania, in the third circuit, at a session of the same court, to be holden at Philadelphia on the twelfth day of April next, to satisfy Hollingsworth Magniac, Daniel Snaith Magniac, and William Jardine, trading under the firm of Magniac & Co., as well of a certain sum of twenty-two thousand one hundred and ninety-one dollars and seventy-two cents, which, to the said Hollingsworth, Daniel, and William, in the said court, before the judges of the said court, by the consideration of the same judges, was adjudged for their damages which they had sustained by occasion of the non-performance of certain promises and assumptions by the said John R. Thomson to the said Hollingsworth, Daniel, and William made, as the sum of seventeen dollars and forty cents, which to them was in like manner adjudged for their costs and charges by them about their suit in that behalf expended, whereof the said John R. Thomson is convict, as appears of record; and have you then there this writ.

Witness the honorable John Marshall, chief justice of the Supreme Court of the United States, at Philadelphia, this fourteenth day of November, A. D. 1829, and in the fifty-fourth year of the independence of the said United States.

D. CALDWELL,
Clerk circuit court.

Endorsed:

No. 9, circuit court, April session, 1830. Original No. 18, October session, 1826. Hollingsworth Magniac, Daniel Snaith Magniac, and William Jardine, trading under the firm of Magniac & Co., aliens and subjects of the King of Great Britain, vs. John R. Thomson, a citizen of the State of New Jersey. Al. ca. sa. case. Real debt $22,191 72. Interest from 26 November, 1827. Costs. Attorney for plaintiffs $8 50; clerk $5 37; marshal $3 33; crier $0 20, $17 40. Ca. sa. $2 40; al. ca. sa. $2 40. Mr. Ingersoll for plaintiffs.

Marshal's return.

Afterwards, to wit, on the twelfth day of April, A. D. 1830, the said marshal makes return of the said writ in the words following, to wit: "C. C. and enlarged by agreement of plaintiffs' attorney; so answers

J. CONARD, *Marshal.*

UNITED STATES OF AMERICA,
Eastern district of Pennsylvania, ss.

I certify the foregoing to be a full, true, and faithful copy of the record and proceedings of the circuit court of the United States, for the eastern district of Pennsylvania, in the third circuit, in a certain suit at law therein lately depending, wherein Hollingsworth Magniac, and others were plaintiffs, and John R. Thomson was defendant.